IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. 325 of 2004
in
Suit No. l564 of l978

Noshir Elavia.. appellant
vs
Krishna Malhotra & Ors ..Respondents

Ms K C Nichani i/b M/s Gagrat & Co for appellant
None for respondents

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 23.2.2005

P.C:

l. This appeal is directed against the judgment and decree dated l9.l2.2003 dismissing the appellant's suit for specific performance of an oral agreement for sale of suit property and in the alternative for damages. The main issue is whether on l7.l0.l978 a concluded agreement had been arrived at between the appellant and respondent no l with regard to the sale of the suit property on the terms and conditions as reflected in letter of offer dated l6.l0.l978.

2. Briefly the case of the appellant is that on l7.l0.l978 an oral agreement was arrived at between the appellant and respondent no.l whereby respondent no.l agreed to sell to the appellant the

suit property for the price of Rs. l3.25 lacs on terms and conditions as mentioned in the said letter of offer handed over by the appellant to the respondent no.l. It is further case of the appellant that on the same date at about ll.30 a.m. a meeting was held in the chamber of respondent no.l Solicitor Mr. Bachubhai Munim wherein the appellant, his then Solicitor Mr B.S.Bhesania, respondent no.l Solicitor Mr. Bachubhai Munim were present. Besides this Mr. Prem Kishan and one Mr. Kulkarni were also present. In that meeting an agreement arrived at between the appellant and respondent no.l was confirmed by Prem Kishan and a letter was handed over by Prem Kishan to Bachumbhai Munim . The appellant had also written one cheque for Rs. l lac and offered to hand over the same to Bachubhai but Bachubhai declined to accept the same. At that time Bachubhai said that the concluded agreement for sale has been arrived at and that fact he had personally confirmed from respondent no.l on telephone. Bachubhai however told the appellant and his Solicitor that before the formal agreement was executed the appellant should first investigate into the title of the respondent to suit property because it was his practice to advice his client to enter into formal

agreement for sale after all the formalities are completed and investigation of the title and approval to the draft conveyance is given by the parties. Accordingly a formal conveyance relating to the suit property was sent by Mr Bachubhai Munim to Solicitor Bhesania. However, on 24.l0.l978 the appellant received letter from Bachubhai Munim wherein it was stated that the respondent no.l did not desire to carry on further negotiations with the appellant. The appellant thereafter filed the present suit for specific performance. It appears that respondent no l had entered into an agreement for sale of the suit property with respondent nos. 2 and 3. The appellant therefore amended the plaint and impleaded respondent nos. 2 and 3. The case of the appellant is that he was always ready and willing to perform his part of the contract but respondent no.l failed to perform his part of the contract.

3. The suit was resisted by respondent no.l by filing his written statement. He denied that the agreement for sale was arrived at between the appellant and respondent no.l on l7.l0.l978 or any other date. The respondent no.l had not denied that a meeting took place between the appellant and

respondent no l at the respondent no.l's place and thereafter in the office of the Solicitor Mr. Bachubhai Munim. However, the respondent no.l refuted the allegation that there was a concluded contract between the parties . It was contended by the respondent no.l that in the meeting several terms were discussed but negotiations had not materialised into a contract and Mr. Munim Solicitor of respondent no.l informed the appellant that no agreement shall be deemed to be concluded unless a formal agreement is executed. and all the parties admit and agree to all the terms thereof and the title of the property is investigated by the Solicitor of the intending purchaser. Accordingly on the same date i.e. l7.l0.l978 respondent no.l's lawyer addressed a letter to the appellant and in that letter it was specifically stated that no agreement shall be deemed to have been arrived at till the formal agreement is signed and this is strictly during the course of negotiations. The respondent no.l also contended that on 28.l0.l978 they issued a letter through their Solicitor to appellant's Solicitor that they are no more interested in negotiations.

4 We have gone through the pleadings and evidence

both oral and documentary with the assistance of the learned counsel. At the outset it is required to be noted that it is the specific case of the appellant that on l7.l0.l978 an oral agreement was arrived at for purchase of property for Rs.l3,50,000 in terms of the letter of offer Exh A to the plaint. This letter is not only not signed by the parties but the consideration or the purchase price is also not mentioned in the said letter and on the contrary the said column was kept blank. If really the contract had been concluded at the residence of the respondent no.l then certainly the appellant would have obtained the signature of the respondent no.l and would have mentioned the amount of consideration in the said letter. Though as per the letter of offer cheque of Rs. l lacs was to be deposited it is an admitted position that such a cheque was not delivered to the respondent no.l.

5. It is an admitted fact that during the course of meeting on l7.l0.l978 held at the office of Bachubhai Munim, Mr. Munim had made it clear that no formal agreement would be executed unless and until the title to the property is investigated by the appellant advocate and is approved. It is also

an admitted position that for this purpose a copy of document of title was handed over along with covering letter of Bachubhai Munim. If we peruse this letter it would be clear that there was no concluded contract beteen the parties.The said letter at Exh D4 reads as under:

" Bachubhai Munim & Co.
Advocates & Solicitors
4, Ali Chambers
Bombay 400023

Ref No.3062 date l7th Oct l978

STRICTLY WITHOUT PREJUDICE

M/s Mulla & Mulla & Craigie Blunt & Caree
Solicitors and Advocates
Bombay
Atten: B.S.Bhesania

Dear Sirs

Re: Negotiations for sale of property at Walkeshwar Mrs Krishna Malhotra to your client.

As per the discussion your Mr. Bhesania had with our Mr. Bachubhai, we send herewith the photocopy of the conveyance dated l2th October l956, (Shivaji Velhi Kothari to

Krishna Premnath Malhotra) in order to enable you to investigate the title.

We are making it clear that no agreement shall be deemed to have been arrived at till a formal agreement is signed and this is strictly during the course of negotiations.

Yours truly

For Bachubhai Munim & Co

sd

Partner

Encl: As above

6. The above letter makes it very clear that no agreement shall be deemed to have been arrived at unless and until formal agreement is signed. This letter completely negatives the case of the respondent no.l that there was an oral concluded contract. In fact had there been a concluded contract respondent no.l's Solicitor would not have written the said letter. It appears that before the learned single Judge objection was taken to the admissibility of the letter dt. l7.l0.l978 and it was rightly rejected. We are satisfied that the conduct of the parties does not show that there was a concluded contract. The appellant has not

advanced any amount towards the alleged oral agreement for sale. There is no satisfactory explanation as to why the letter Exh A was not signed by the parties and why the amount of consideration was not mentioned in the said letter. In the circumstances it is difficult to accept the case of the appellant that there was a concluded contract between the appellant and respondent no l. In any event it is admitted position that the alienation of the property to respondent nos. 2 and 3 is not challenged in the suit. Therefore the specific performance cannot be granted. The contract is of l7.l0.l978 whereas the alleged breach is of 24.l0.l978. In the circumstances. no damage could be awarded for this period of one week.

In the result appeal is dismissed.